IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

APPEAL NO.584 OF 1999

IN

NOTICE OF MOTION NO.1484 OF 1995

IN

SUIT NO.3783 OF 1994

...

M/s.P.Banerji Mihijam ...Appellant

v/s.

ICPA Health Products Pvt.Ltd. ...Respondents

...

Mr.A.Y.Bookwala i/b Bharat Shah & Co. for the Appellant.

Mr.Janak Dwarkadas with Mr.Rahul Chitnis i/b Dhruve Liladhar & Co. for the Respondents.

...

CORAM: D.K.DESHMUKH &

J.H.BHATIA, JJ.

DATED: 25TH JULY, 2007

P.C.:

1. This Appeal is directed against the order dated 8th September, 1997 passed by the learned single Judge of this court in Notice of Motion No.1484 of 1995. By that order the learned single Judge dismissed the Notice of Motion taken out by the Plaintiff and declined to grant him any interim order. The Plaintiff has filed this suit for infringement of the trade-mark and also for passing off. It is common ground that there was no ad-interim order in favour of the Plaintiff and even finally the learned single Judge declined to make any interim order. In our opinion, therefore, it will not be appropriate to disturb the position that is in existence at least from 1994.

2. The grievance of the learned Counsel appearing for the Appellant is that the learned single Judge has in the order impugned made certain observations, which may come in his way in proving his claim in the suit.

3. In our opinion, there is no substance in the grievance made by the learned Counsel, because the observations have been made by the learned single Judge for the purpose of disposing of the Notice of Motion and those observations are relevant only for that purpose those observations have been made to find out whether there is a prima facie case in favour of the Plaintiff. It is clarified that the observations made in the order impugned in the Appeal are relevant strictly for the purpose of deciding the Notice of Motion and they will not be relevant either at the decision of the trial of the suit or for any other proceedings between the parties.

4. Appeal disposed of.

5. Considering that the suit relates to the year 1994, the learned single Judge taking up the suit for final disposal is requested to dispose of the suit as expeditiously as possible.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)

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